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IN THE

Supreme Court of the United States

No. .....

DORIS ROSE,
Respondent, Plaintiff and Appellee Below,

vs.

JACK ROSE,
Petitioner, Defendant and Appellant Below.

PETITION FOR WRIT OF CERTIORARI TO THE OAKLAND COUNTY CIRCUIT COURT OF THE STATE OF MICHIGAN

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States

Petitioner respectfully prays that a writ of certiorari issue to review a judgment of the Oakland County Circuit Court, leave to appeal which judgment has been denied by the Michigan Supreme Court.

OPINIONS BELOW

The decisions, judgments, and orders in the courts below are:

A. Decision of the Trial Court (Oakland County Circuit Court, Sixth Judicial Circuit of Michigan, Judge James S. Thorburn) in letter form to appoint a guardian ad litem. Dated March 28, 1969 (p. 13).

B. Order of the Michigan Court of Appeals denying leave to appeal the Trial Court's decision of March 28, 1969. Dated April 18, 1969 (p. 14).

C. Order of the Trial Court appointing guardian ad litem. Dated April 23, 1969 (p. 15).

D. Order of the Trial Court modifying its order of April 23, 1969. Dated August 15, 1969 (p. 16).

E. Judgment of divorce of the Trial Court. Dated October 22, 1969. This is the judgment sought to be reviewed (p. 18).

F. Order of the Michigan Court of Appeals denying leave to appeal the Trial Court's orders of April 23 and August 15, 1969. Dated December 22, 1969 and certified December 30, 1969 (p. 22).

G. Order of the Michigan Court of Appeals dismissing appeal of the judgment of divorce of October 22, 1969. Dated July 17, 1970 and certified July 20, 1970 (p. 23).

H. Order of the Michigan Court of Appeals denying rehearing of its order of July 17, 1970. Dated August 26, 1970 and certified September 1, 1970 (p. 25).

I. Order of the Michigan Court of Appeals denying rehearing of its order of August 26, 1970. Dated January 7, 1971 (p. 27).

J. Order of the Michigan Supreme Court denying leave to appeal the Court of Appeals' order of January 7, 1971. Dated March 16, 1971 and certified March 17, 1971 (p. 29).

Copies of these decisions, judgments and orders are attached in the Appendix and identified with matching letters.

JUDISDICTION

The order of the Michigan Supreme Court denying leave to appeal the Michigan Court of Appeals' order of January 7, 1971, denying rehearing of its order of August 26, 1970, denying rehearing of its order of July 17, 1970, dismissing the appeal of the Trial Court's judgment of divorce of October 22, 1969, review of which is sought, is dated March 16, 1971.

28 U.S.C. Sec. 1257(3) is believed to confer jurisdiction on this Court to review the judgment in question by writ of certiorari.

QUESTIONS PRESENTED FOR REVIEW

1. May a person of full age and sound mind defend a civil action in person in a state which provides by statute that "Every person of full age and sound mind, may prosecute or defend civil actions in any court by an attorney, or may at his election prosecute or defend civil actions in person."?

2. Is a person permitted to defend a civil action in person when an attorney has been appointed for him in

such case in a state which provides by statute that "No person shall be permitted to prosecute or defend any civil action in person, when he has an attorney in such case."?

3. Is a suitor afforded due process where he is denied his constitutional right to defend his suit in his own proper person?

4. Where one of the adversaries is removed from an adversary proceeding, can there still remain an adversary proceeding?

5. How may an individual protect himself from a judge who insists on protecting the individual from himself?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

(a) UNITED STATES CONSTITUTION. Amendment XIV, Sec. 1:

> "... nor shall any State deprive any person of life, liberty, or property, without due process of law; ..."

(b) MICHIGAN CONSTITUTION OF 1963. Art. I, Sec. 13:

> "A suitor in any court of this State has the right to prosecute or defend his suit, either in his own proper person or by an attorney.

(c) MICHIGAN STATUTE. Revised Judicature Act of 1961. Sec. 1430; Mich. Compiled Laws Ann. 600.1430; Mich. Stat. Ann. 27A.1430:

APPEARANCE IN COURT BY ATTORNEY OR IN PERSON; EXCEPTION

Every person of full age and sound mind may prosecute or defend civil actions in any court by an attorney, or may, at his election, prosecute or defend civil actions in person. No person shall be permitted to prosecute or defend any civil action in person, when he has an attorney in such case.

STATEMENT OF THE CASE

Petitioner was loath to represent himself when the third successive divorce action was brought against him, but he had no choice (please see Appendix K, p. 31).

Without benefit of a sanity inquest—with no more justification than that the Court was "of the opinion that a guardian ad litem should be appointed to protect the interests of the defendant" (please see Appendix D, p. 16) —above the strenuous protests of the defendant, Judge Thorburn appointed an attorney-guardian for the petitioner, Mr. Steven N. Andrews.

Petitioner sought leave to appeal the order of appointment to the Michigan Court of Appeals and ceased defending himself in the Trial Court. The Court of Appeals twice denied petitioner's application for leave to appeal the order of appointment (please see Appendices B and F, p. 14 and p. 22). In the meantime, fearful of ratifying the appointment, petitioner refused to cooperate with his court appointed attorney-guardian (please see Appendix L, p. 33).

The "defense" of the divorce action was taken over by Mr. Andrews— an unwelcome attorney for an unwilling

and uncooperative client. Within a few months after petitioner had been thus removed from his own litigation, a judgment of divorce was signed by Judge Thorburn (please see Appendix E, p. 18) awarding *inter alia* $20,000 to Mr. Andrews and $85,000 to Mr. Ivan E. Barris, counsel (among several) for petitioner's wife. So far petitioner has paid out over $200,000 in attorney fees alone trying to preserve his marriage.

Petitioner sought in vain to find an attorney to take an appeal. No attorney would risk incurring Judge Thorburn's disfavor. Petitioner does not blame these attorneys for their fear of Judge Thorburn; petitioner is himself afraid of Judge Thorburn. Petitioner has not been without legal counsel, but in order to obtain it he has promised not to reveal the names of his counselors. Petitioner attempted to appeal the judgment of divorce to the Michigan Court of Appeals and to the Michigan Supreme Court. Both Courts have refused to hear an appeal (please see Appendices G and J, p. 23 and p. 29).

Please see the *Statement of Facts* of Appendix M for a further statement of the case (p. 35).

MANNER OF RAISING FEDERAL QUESTIONS SOUGHT TO BE REVIEWED

Petitioner's every application for leave to appeal has been grounded exclusively in due process (please see Appendix M, p. 39, for example).

Petitioner has struggled at length to decide to which court the requested writ of certiorari should be addressed. While he is supposed to have a right to an appeal to the Michigan Court of Appeals, he does not in fact have such

a right. His appeal was dismissed for no reason that is even colorably valid or justifiable. The order of dismissal refers to a motion to dismiss the appeal (please see Appendix G, p. 23). But there was no such motion! The order goes on to say that the appeal is dismissed "for the reason that appealant (sic) failed to file the full transcript of hearings in the trial court, or in the alternative, to move in the trial court for an order that less than the full transcript be filed, pursuant to GCR 1963, 812.2(a)." But appellant did file the full transcript of hearings in the Trial Court! And even if he hadn't, it still would not have constituted a non-compliance with GCR 1963, 812.2(a)! In fact the order of dismissal itself does not state that there was any non-compliance with any court rule.

The Court of Appeals simply did not want to hear the appeal. Unable to find any valid reason to dismiss the appeal, it proceeded on the pretext of an invalid reason.

It is petitioner's belief, therefore, that the Oakland County Circuit Court is the highest court of Michigan in which a decision could be had. If petitioner has erred in his selection, he respectfully asks this Honorable Court to address the requested writ of certiorari either to the Michigan Court of Appeals or to the Michigan Supreme Court whichever it deems proper.

Appeal of the judgment, review of which is sought, is still pending in the Michigan Court of Appeals unbeknown to Judge Thorburn. It will pend there forever, no doubt.

ARGUMENT

The answer to the first four questions presented for review in this petition are self-evident to everyone. They are self-evident to Judge Thorburn. He acknowledged that the appointment of an attorney-guardian was "unlawful" (please see Appendix N, p. 40). What could petitioner say to Judge Thorburn after that acknowledgement? Could he say, "Judge Thorburn, what you are doing here is unlawful", after Judge Thorburn had already informed petitioner that he didn't give a damn whether it was unlawful or not? At one time Judge Thorburn insisted that there was case law to support his order of appointment (please see Appendix O, p. 42) however he has refused to cite the cases. And a diligent search on the part of petitioner and his counsel has failed to disclose any cases.

The answers are also self-evident to Mr. Barris, counsel for petitioner's wife. He moved the Trial Court to vacate the order of appointment arguing that "if the defendant wishes to exercise his constitutional right to appear as his own counsel, this Honorable Court should allow him to do so", (please see Appendix P, p. 44).

So are the answers self-evident to Mr. Andrews, attorney-guardian for petitioner. At the conclusion of the proceedings held at the end of September, 1969, and termed a "trial" by Judge Thorburn, Mr. Andrews acknowledged that petitioner refused to cooperate with him (please see Appendix N, p. 40). Surely Mr. Andrews does not sincerely believe that he can successfully represent an uncooperative litigant.

The answers are also self-evident to the judges of the Michigan Court of Appeals and the Michigan Supreme

Court. That is why they have refused to hear an appeal. They know that the judgment of divorce will have to be vacated and their fraternity brothers will have to return the money if an appeal is heard on the merits.

Petitioner does not know the answer to the fifth and last question presented for review in this petition. Judge Thorburn's words of April 23, 1969 still send chills down petitioner's spine.—"The only conclusion I can reach is that you need protection from yourself" (please see Appendix O, p. 41). Petitioner tried to protect himself by exercising his constitutional right to defend his suit in his own proper person. Judge Thorburn protected petitioner from himself by denying petitioner his constitutional right to defend his suit in his own proper person. What is the difference between protecting an individual from himself and denying an individual his constitutional rights? Was Judge Thorburn also protecting petitioner's wife from herself when he urged her to divorce petitioner (please see Appendix Q, p. 45)? What dire fate would have befallen the parties if Judge Thorburn had not been there to protect them from themselves? A reconciliation perhaps? A family?

Can freedom of choice, individual liberty, or self-determination exist in a state which is empowered to protect the individual from himself? Doesn't the theory of individualism lie at the heart of the American political, economic, and judicial systems? Isn't that theory subverted by a doctrine which authorizes the state to protect the individual from himself?

Petitioner cannot help thinking of George Orwell's novel *1984*. The Thought Police were only protecting poor Winston Smith from himself when they subjected him to the consumate horror of room 101 of the Ministry of Love. Ultimately, they succeeded in making him over in their

own image; they "cured" him of his individualism. In the end "he loved Big Brother". Is Judge Thorburn trying to make petitioner over in his image? Petitioner does not want to be like Judge Thorburn! He would rather be dead! Nor does petitioner believe that Judge Thorburn is protecting anyone's interests but his own. Petitioner has compelling evidence of a corrupt agreement between Judge Thorburn and Mr. Barris to bring and sustain unfounded litigation against petitioner repeatedly for the purpose of generating attorney fees, portions of which, of course, are paid to Judge Thorburn. Petitioner has offered his evidence formally to the Oakland County Circuit Court, the Wayne County Circuit Court, the Michigan Court of Appeals, the Michigan Supreme Court, the Supreme Court Administrator, the Michigan Judicial Tenure Commission, the State Bar of Michigan, and the Oakland County Prosecuting Attorney. Each agency has refused to receive the evidence. No one in the Michigan judiciary wants to know anything about Judge Thorburn's corruption!

How may petitioner protect himself from a judge who insists on protecting petitioner from himself? He desperately hopes that this petition is itself the answer to this question. If this Honorable Court denies the writ of certiorari requested, then there is no answer. In that event heaven help us all, for in the words of Mr. Chief Justice Warren E. Burger, "A sense of confidence in the courts is essential to maintain the fabric of ordered liberty for a free people." Please see the *Argument* of Appendix M for further argument (p. 37).

RELIEF SOUGHT

Petitioner entreats this Honorable Court to review the subject judgment.

Respectfully submitted,

Jack Rose
23999 West Ten Mile Road, Suite A
Southfield, Michigan 48075
352-0952

Dated: May 4, 1971.

APPENDIX A

DECISION OF TRIAL COURT TO APPOINT A GUARDIAN AD LITEM

SIXTH JUDICIAL CIRCUIT OF MICHIGAN
Pontiac, Michigan 48053

March 28, 1969

Mr. Ivan E. Barris
2066 Penobscot Building
Detroit, Michigan 48226

Mr. Jack Rose
6186 W. Outer Drive.
Detroit, Michigan 48235

Rose v. Rose, Nos. 09276, 22744 and 68-47753

Gentlemen:

I will render my decision on the appointment of a guardian ad litem, and the reasons for determining the necessity of the appointment, and the name of the guardian ad litem, on Wednesday, April 23, 1969. I shall file a praecipe on the matter on my own motion for 9 o'clock that morning.

Sincerely,

James S. Thorburn
Circuit Judge

JST:nm

APPENDIX B

ORDER OF MICHIGAN COURT OF APPEALS DENYING LEAVE TO APPEAL

At a session of the Court of Appeals of the State of Michigan, held at the Court of Appeals in the City of Lansing, on the 18th day of April in the year of our Lord one thousand nine hundred and sixty-nine.

Present the Honorable Robert J. Danhof, Presiding Judge; Timothy C. Quinn, Louis D. McGregor, Judges.

Doris Rose
Plaintiff-Appellee
v.
Jack Rose
Defendant-Appellant
L.C. 68-47753

No. 7215

In this cause an application for leave and a motion for immediate consideration is filed by defendant-appellant, and an answer in opposition thereto having been filed, and due consideration thereof having been had by the Court.

It is ordered that the motion for immediate consideration be, and the same is hereby granted.

It is further ordered that the application for leave to appeal be, and the same is hereby denied for lack of merit in the grounds presented.

(Clerk's certification of April 18, 1969)

APPENDIX C

STATE OF MICHIGAN—In the Circuit Court for the County of Oakland

Doris Wertheimer Rose,
Plaintiff,
v.
Jack Rose,
Defendant.

No. 9276
22744
68-47753

ORDER APPOINTING GUARDIAN AD LITEM

At a session of said Court held in the Court House in Pontiac, Michigan, on April 23, 1969.

Present: The Honorable James S. Thorburn, Circuit Judge.

The plaintiff having filed a Petition for Appointment of Guardian Ad Litem for the Defendant, the Court on its own motion bringing on for hearing the subject matter of said guardian ad litem, oral argument having been heard, the Court being fully advised in the premises and being satisfied from a review of the files and records of this cause that the defendant is incompetent to properly represent himself in this particular cause.

Now, therefore,

It is hereby ordered that Fred N. Searl of 950 Union Bank Building, Grand Rapids, Michigan 49502, be, and hereby is, appointed Guardian Ad Litem of the defendant, Jack Rose, during the pendency of this cause, or until further order of this Court.

James S. Thorburn
Circuit Judge

Ivan E. Barris
Attorney for Plaintiff
2066 Penobscot Building
Detroit, Michigan 48226
WO 2-8210

APPENDIX D

STATE OF MICHIGAN—In the Circuit Court for the County of Oakland

Doris Wertheimer Rose, Plaintiff, v. Jack Rose, Defendant.	Nos. 9276, 22744, 68-47753

ORDER WITHDRAWING NOMINATION OF FRED SEARL AS GUARDIAN AD LITEM, ORDER APPOINTING STEVEN N. ANDREWS AS GUARDIAN AD LITEM, AND ORDER DENYING PLAINTIFF'S MOTION TO WITHDARW ORDER APPOINTING GUARDIAN AD LITEM

At a session of said court held in the Courthouse in the City of Pontiac, Michigan, on August 15, 1969.

Present: Honorable James S. Thorburn, Circuit Judge.

The plaintiff having filed a motion to withdraw an earlier order appointing a guardian ad litem for the defendant, the court being of the opinion that said order appointing a guardian ad litem should not be withdrawn, and the court being advised that the originally nominated guardian ad litem, Mr. Fred Searl, is unable because of health reasons to enter into his duties as guardian ad litem, and the court being of the opinion that a guardian ad litem should be appointed to protect the interests of the defendant and the court having decided to appoint one Steven N. Andrews as Guardian Ad Litem;

It is hereby ordered that the nomination of Fred Searl as Guardian Ad Litem for the defendant be and hereby is withdrawn;

It is further ordered that Steven N. Andrews be and hereby is appointed Guardian Ad Litem for the defendant;

It is further ordered that the plaintiff's motion to withdraw order appointing guardian ad litem for the defendant be and hereby is denied.

Clark J. Adams,
Circuit Judge
For James S. Thorburn,
Circuit Judge.

Approved as to form only:

Ivan E. Barris
Attorney for Plaintiff
2066 Penobscot Building
Detroit, Michigan 48226
962-8210

Steven N. Andrews
Guardian Ad Litem for the
Defendant
14 E. Fourteen Mile Road
Clawson, Michigan 48017

APPENDIX E

STATE OF MICHIGAN—In the Circuit Court for the County of Oakland

Doris Wertheimer Rose, Plaintiff, v. Jack Rose, Defendant.	Nos. 9276 22744 68-47753

JUDGMENT OF DIVORCE

At a session of said Court held in the Court house in the City of Pontiac, County of Oakland, Michigan, on October 22, 1969.

Present: The Honorable James S. Thorburn, Circuit Judge.

The plaintiff having filed a Complaint for Absolute Divorce and two Supplemental Complaints for Absolute Divorce, the defendant having filed Answer thereto, testimony having been taken and the Court being of the opinion that the plaintiff has established that the defendant was guilty of acts of extreme and repeated cruelty and non-support;

Now, therefore, on motion of Ivan E. Barris, attorney for the plaintiff;

Divorce

It is hereby ordered, and this Court, by virtue of the authority therein vested and pursuant to the statutes in such case made and provided, does order and adjudge that the marriage between the plaintiff Doris Wertheimer Rose and the defendant Jack Rose be dissolved, and a Judgment of Divorce is hereby awarded to Doris Wertheimer Rose which said divorce shall be effective upon the entry of this Judgment of Divorce.

Alimony

It is further ordered and adjudged that the plaintiff shall have no alimony and that alimony shall be forever barred.

Property Settlement

It is further ordered and adjudged that the defendant shall pay forthwith and simultaneously with the entry of this Judgment of Divorce the sum of Six Hundred Fifty Thousand ($650,000.00) Dollars to the plaintiff.

It is further ordered and adjudged that to implement the payment of the above-awarded sum of money all of the processes available for collection in an action at law, not limited to but including writs of garnishment, execution and attachment, shall issue as required; and to further implement the payment of the above-awarded sum of money the Court will continue in full force and effect the Injunction against the transfer, sale or alienation of assets by the defendant, and, accordingly, until further order of this Court the defendant shall be, and hereby is, enjoined and restrained from concealing, selling, assigning, transferring, conveying, surrendering, waiving, relinquishing, mortgaging, pledging, hypothecating, leasing, alienating encumbering or granting options with respect to any of his business interests, real property, securities, stocks, options, safe deposit boxes, funds on deposit in brokerage accounts, savings accounts, commercial accounts, automobiles or any of his other assets, real or personal, tangible or intangible, except in the usual course of business.

It is further ordered and adjudged that this Court will keep jurisdiction of all property within its jurisdiction for a period of sixty (60) days in the event there is a request or petition by plaintiff for receivership, collection or ap-

plication of assets or foreclosure of liens existing hereto on all assets of the defendant, it being further the order of this Court that there shall be a lien upon all assets of the defendant to guaranty and insure payment by him of the aforesaid Six Hundred Fifty Thousand ($650,000.00) Dollars to the plaintiff.

It is further ordered and adjudged that each of the parties will keep as their sole and separate assets all of the tangible personal property now in his or her possession.

It is further ordered and adjudged that other than hereinabove provided the plaintiff shall have no claim upon any assets or property of the defendant.

Statutory Insurance Clause

It is further ordered and adjudged that any interest which either of the parties hereto may now have or may heretofore have had in any of the insurance contracts or policies of the other party shall be, and the same hereby is and are, extinguished, and the parties hereto shall in the future hold all such insurance free and clear of any right or interest which the other party now has or may heretofore have had therein or thereto by virtue of being the beneficiary, the contingent beneficiary or otherwise.

Dower

It is further ordered and adjudged, that the above division of property shall be in lieu of any claim and dower interest of any kind and nature that the plaintiff has had or will have against the property ever owned, now held or hereafter acquired by the defendant.

Attorney and Guardian Ad Litem Fees

It is further ordered and adjudged that the defendant forthwith and simultaneously with the entry of this Judgment of Divorce shall pay to Ivan E. Barris, attorney for the plaintiff, an attorney fee in the sum of Eighty-Five Thousand ($85,000.00) Dollars.

It is further ordered and adjudged that the defendant shall forthwith and simultaneously with the entry of this Judgment of Divorce pay to Steven N. Andrews, guardian ad litem, the sum of Twenty Thousand, One Hundred One and 20/100 ($20,101.20) Dollars as fees as guardian ad litem, and as an attorney for the guardian ad litem, i.e., commonly called fees for extraordinary service.

It is further ordered and adjudged that in order to insure and implement payment of the aforesaid Eighty-Five Thousand ($85,000.00) Dollar attorney fee to counsel for the plaintiff and the Twenty Thousand, One Hundred one and 20/100 ($20,101.20) Dollar fee to the guardian ad litem, the Court, as aforesaid, will continue in effect the Injunction against the transfer, sale or alienation of assets and will keep jurisdiction of all attorney and guardian fee matters within its jurisdiction for a period of sixty (60) days in the event there is a request or petition by plaintiff's counsel or the guardian ad litem for receivership, collection or application of assets or foreclosure of liens existing hereto on all assets of the defendant, it being further the order of this Court that counsel for the plaintiff and the guardian ad litem shall have a lien on all the assets of the defendant to guaranty payment of their respective fees.

James S. Thorburn,
Circuit Judge.

IVAN E. BARRIS
Attorney for Plaintiff
2066 Penobscott Building
Detroit, Michigan 48226
WO 2-8210

APPENDIX F

ORDER OF MICHIGAN COURT OF APPEALS DENYING LEAVE TO APPEAL

At a Session of the Court of Appeals of the State of Michigan, Held at the Court of Appeals in the City of Lansing, on the 22nd day of December, in the year of our Lord one thousand nine hundred and sixty-nine.

Present the Honorable Robert J. Danhof, Presiding Judge; Timothy C. Quinn, Louis D. McGregor, Judges.

Doris Rose,
Plaintiff-Appellee
v.
Jack Rose
Defendant-Appellant
No. 8593

In this cause an application for leave to Appeal from an interlocutory order appointing a guardian ad litem and a motion for Stay of Proceedings are filed, and nothing in opposition thereto having been filed, and due consideration thereof having been had by the Court;

It is ordered that the motion for Stay of Proceedings be, and the same is hereby denied.

It is further ordered that the application for Leave to Appeal be, and the same is hereby dismissed for the reason that there is presently pending in this Court an appeal as of right by the appellant from the final judgment of divorce entered on October 22, 1969. On that appeal the appellant is entitled to raise any questions involving the interlocutory order appointing a guardian ad litem.

(Clerk's certification of December 30, 1969)

APPENDIX G

ORDER OF MICHIGAN COURT OF APPEALS DISMISSING APPEAL

At a Session of the Court of Appeals of the State of Michigan, Held at the Court of Appeals in the City of Lansing, on the 17th day of July, in the year of our Lord one thousand nine hundred and seventy.

Present the Honorable Robert J. Danhof, Presiding Judge; Timothy C. Quinn, Louis D. McGregor, Judges.

National Bank of Detroit, a National Banking Association, Plaintiff-Appellee, v. Jack Rose, Defendant-Appellant, Doris Wertheimer Rose, Ivan E. Barris, and Steven N. Andrews, Defendants-Appellees. L.C. No. 144 270	No. 8866
Doris Wertheimer Rose, Plaintiff-Appellee, v. Jack Rose, Defendant-Appellant. L.C. No. 68-47753	No. 8562

In these causes a motion to dismiss the appeal is filed, and an answer in oppostion thereto having been filed, and due consideration thereof having been had by the Court,

It is ordered that these appeals be, and they are hereby dismissed, for the reason that appeallant (sic) failed to file the full transcript of hearings in the trial court, or in the alternative, to move in the trial court for an order that less than the full transcript be filed, pursuant to GCR 1963, 812.2(a).

It is further ordered that the stay of proceedings entered and the bond set by this Court on January 30, 1970, be and they are hereby set aside.

(Clerk's certification of July 20, 1970)

APPENDIX H

ORDER OF MICHIGAN COURT OF APPEALS DENYING REHEARING

AMENDED ORDER

At a session of the Court of Appeals of the State of Michigan, held at the Court of Appeals in the City of Lansing, on the 26th day of August, in the year of our Lord one thousand nine hundred and seventy.

Present the Honorable Robert J. Danhof, Presiding Judge; Louis D. McGregor, Timothy C. Quinn, Judges.

Doris Wertheimer Rose, Plaintiff-Appellee, v, Jack Rose, Defendant-Appellant.	No. 8562
National Bank of Detroit, Plaintiff-Appellee, v. Jack Rose, Defendant-Appellant, and Doris Wertheimer Rose, et al., Defendants-Appellees.	No. 8866

In these causes appellant has filed an application for rehearing of this Court's order dismissing these appeals and a motion for disqualification of certain judges and for a full hearing thereon, and appellee has filed a motion for

clarification of the order dismissing these appeals, and answers in opposition to the respective motions having been filed and due consideration thereof having been had by the Court.

It is ordered that the application for rehearing be and the same is hereby denied.

It is further ordered that the motion for disqualification and for full hearing thereon be and the same is hereby denied.

It is further ordered that the motion for clarification be and the same is hereby granted.

It is further ordered that this Court's order dated January 30, 1970 and modified on June 9, 1970 shall remain in full force and effect until the judgment of divorce is satisfied in toto as to the interest of Doris Wertheimer Rose and Ivan E. Barris.

Judge Quinn dissents from the order granting motion for clarification.

State of Michigan—ss.

I, Ronald L. Dzierbicki, Clerk of the Court of Appeals of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original; and that it is a true transcript therefrom, and the whole of said original order.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court of Appeals at Lansing, this 1st day of September, in the year of our Lord one thousand nine hundred and seventy.

Ronald L. Dzierbicki,
Clerk.

APPENDIX I

ORDER OF MICHIGAN COURT OF APPEALS DENYING REHEARING

At a session of the Court of Appeals of the State of Michigan, held at the Court of Appeals in the City of Lansing, on the 7th day of January, in the year of our Lord one thousand nine hundred and seventy-one.

Present the Honorable Robert J. Danhof, Presiding Judge; Louis D. McGregor, Timothy C. Quinn, Judges.

Doris W. Rose,
Plaintiff-Appellee,
v.
Jack Rose,
Defendant-Appellant,
L.C. No. 68-47753

File No. 8562

National Bank of Detroit, a national banking corporation,
Plaintiff-Appellee,
v.
Jack Rose,
Defendant-Appellant,
and
Doris Wertheimer Rose, Ivan E. Barris and Steven N. Andrews,
Defendants-Appellees.
L.C. No. 68-47753 (sic)

File No. 8866

In these causes appellant has filed an application for rehearing of this Court's order dated August 26, 1970, and nothing in opposition thereto having been filed, and due consideration thereof having been had by the Court;

It is ordered that the application for rehearing be, and the same is hereby denied.

State of Michigan—ss.

I, Ronald L. Dzierbicki, Clerk of the Court of Appeals of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court of Appeals at Lansing, this 7th day of January, in the year of our Lord one thousand nine hundred and seventy-one.

Ronald L. Dzierbicki,
Clerk.

APPENDIX J

ORDER OF MICHIGAN SUPREME COURT DENYING LEAVE TO APPEAL

At a session of the Supreme Court of the State of Michigan, held at the Supreme Court Room, in the City of Lansing, on the 16th day of March in the year of our Lord one thousand nine hundred and seventy-one.

Present the Honorable Thomas M. Kavanagh, Chief Justice; Eugene F. Black, Paul L. Adams, Thomas E. Brennan, Thomas G. Kavanagh, John B. Swainson, G. Mennen Williams, Associate Justices.

National Bank of Detroit, a National Banking Association,
Plaintiff-Appellee,
v. 53,044
Jack Rose,
Defendant-Appellant,
and
Doris Wertheimer Rose, Ivan E. Barris, and Steven N. Andrews,
Defendants-Appellees.

Doris Wertheimer Rose,
Plaintiff-Appellee,
v. 53,054 (sic)
Jack Rose,
Defendant-Appellant.

On order of the Court, the application in pro per for leave to appeal is considered, and the same is hereby denied, for the reasons that defendant and appellant has failed to persuade the Court that he has a meritorious basis for appeal or that the determination of the Court of Appeals was clearly erroneous.

State of Michigan—ss.

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 17th day of March in the year of our Lord one thousand nine hundred and seventy-one.

Donald F. Winters,
Clerk

APPENDIX K

LETTER FROM PETITIONER TO STATE BAR OF MICHIGAN

Jack Rose
6186 W. Outer Drive
Detroit, Michigan

October 12, 1968

Mr. David J. Ohlgren
State Bar of Michigan
1414 Dime Building
Detroit, Michigan

Dear Mr. Ohlgren:

This letter will bring you up to date on my complaint against Oakland County Circuit Judge James S. Thorburn. You will recall our last conversation in which I revealed to you that the third divorce case had vexatiously been brought against me. Again as a result of a fraudulent certification the case has been assigned to Judge Thorburn. In accordance with our conversation I made a motion to have Judge Thorburn disqualified. The motion was denied by Judge William R. Beasley, although there never was a hearing. Judge Thorburn has continued his extortion and racketeering by awarding a $20,000 attorney fee and $625 per week temporary alimony.

Mr. Ohlgren, I am in desperate need of advice from the State Bar on a question of ethics. I must learn if it would be ethical for me to retain an attorney in this matter. If this were an ordinary adversary proceeding before an honest judge, there would be no question about it. I would retain counsel to present my side of a controversy to a

judge who was trying sincerely to dispense justice. In my case this is impossible; I can not retain an attorney to represent me before Judge Thorburn. I can only retain an attorney to *influence* Judge Thorburn—to bribe him. As a matter of fact I have already done this in the past. When I retained Fred Buesser in the second action, it was not for representation, it was for the purpose of influencing Judge Thorburn. My intention was clearly conveyed to Fred Buesser. It is my feeling that I was morally wrong to do this. I have rationalized my action by telling myself that I never bribed anyone, I was only a victim of extortion. However, I can't honestly say that I can distinguish bribery from extortion. How much coercive force must an official bring to bear before a payment can be justified as extortion?

Last fall the newspapers contained accounts of the investigations by Judge Thorburn while acting in the capacity of a one man grand jury. I read that a land developer had been indicted for bribing a zoning board official. As I recall the payment was allegedly made by the developer's attorney. Suppose I retain counsel, and suppose a future grand jury were to discover that my attorney had bribed Judge Thorburn. Would I not be subject to indictment for bribery? How could I defend myself against such a charge? What would happen to me if I testified truthfully that I hired my attorney only for the purpose of influencing the judge?

Do you feel as I do that it is improper for me to hire an attorney to influence Judge Thorburn? Is it a crime? Should I turn myself in to the public prosecutor for my past offense? Or is it proper? May I rightfully retain counsel for the purpose of influencing the judge?

Please advise me.

Yours very truly,

Jack Rose

APPENDIX L

LETTER FROM PETITIONER TO HIS ATTORNEY-GUARDIAN

Jack Rose
6186 W. Outer Drive
Detroit, Michigan 48235

September 2, 1969

Mr. Steven N. Andrews
Attorney at Law
14 East Fourteen Mile Road
Clawson, Michigan 48017

Dear Mr. Andrews:

I received your letter of August 26, 1969. As you know I am appealing the order of appointment of a Guardian Ad Litem to the Court of Appeals. Despite your association with Judge Thorburn I believe that you are a sincere and honest person. Nevertheless, I cannot voluntarily surrender to you the management of my affairs, the control of my property, the direction of my life, or the selection of my counsel. Neither can I voluntarily pay you for a service I have not requested and do not want.

Please don't think that I am impertinent or rude, but I do not want you to be my guardian. I ask you to withdraw your acceptance of the guardianship. Heaven help us when the court can suspend a person's constitutional rights on the excuse that it is acting in his best interest. Is the usurpation of power any less tyrannical because the usurper

claims to be acting in the best interest of his victim? How can you, a total stranger, even presume to know what is in my best interest?

I regard your appointment as a deprivation of my liberty and property without due process of law and an infringement of my constitutional right to defend my suit in my own proper person. I do not wish to offend you, but please understand that I cannot recognize you as my guardian or cooperate with you in any way. I am afraid that any acquiescence on my part—any voluntary act will constitute a waiver of my objection to your appointment. Furthermore, I cannot in good conscience become a party to the court's extortion.

Sincerely yours,

Jack Rose

JR/bd

APPENDIX M

STATE OF MICHIGAN

In the Court of Appeals

Appeal from Oakland County Circuit Court

Nos. 09276, 22744 & 68-47753 Judge James S. Thorburn

Doris Rose, Plaintiff-Appellee,
v.
Jack Rose, Defendant-Appellant.

Court of Appeals #8562

APPELLANT'S BRIEF

Statement of Questions Involved

Did the appointment of a guardian ad litem over the defendant deny him the opportunity to defend the instant divorce action?

The Trial Court never answered this question.
The Plaintiff never answered this question.
The Defendant says the answer should be "yes".

Statement of Facts

The parties were married on June 15, 1962 and lived together for 18 months. On April 13, 1964, plaintiff filed suit for separate maintenance. The suit was dismissed with prejudice by Judge James S. Thorburn on December 9, 1965. That same day plaintiff filed an action for divorce. The action was dismissed with prejudice by Judge Thorburn on April 29, 1966. An appeal was taken by the plaintiff to the Court of Appeals (#2237). The order of dis-

missal was affirmed on July 2, 1968. The instant case was filed on August 26, 1968.

Early in 1969, Judge Thorburn announced his intention to appoint a guardian ad litem over the defendant despite defendant's objections. On March 28, 1969, Judge Thorburn wrote the defendant advising him that he would name the guardian ad litem in court on April 23, 1969. Defendant sought leave to appeal to the Court of Appeals immediately. Leave to appeal was denied. On April 23, Judge Thorburn entered an Order Appointing Guardian Ad Litem. Again defendant sought leave to appeal to the Court of Appeals. Again leave to appeal was denied. No formal allegation was ever made that defendant was insane, mentally incompetent, or of unsound mind; nor was any insanity inquest ever held. The order of appointment itself only stated that the court was "satisfied from a review of the files and records of this cause that defendant is incompetent to properly represent himself in this particular cause". On August 15, 1969, Judge Thorburn ordered that Mr. Steven N. Andrews be substituted for Mr. Fred N. Searl as guardian ad litem "to protect the interests of the defendant".

Defendant petitioned the Trial Court for a stay of proceedings until it was decided who would represent the defendant. The petition was denied. The defendant wrote Mr. Andrews explaining that while the defendant had the highest regard for Mr. Andrews, he did not want him to be his guardian and explaining that the defendant could not cooperate with him in any way. The defendant requested Mr. Andrews to withdraw his acceptance of the guardianship. The request was denied.

After a trial date was assigned, the defendant made a motion to adjourn the trial, pointing out that he was not

in a position to defend himself—not even in a position to file pleadings. The motion was denied. A Judgment of Divorce was entered after a proceeding referred to by Judge Thorburn as a "trial".

Argument

Defendant admits that he is incompetent to represent himself properly before Judge Thorburn. A litigant's competence to represent himself is measured by his ability to persuade the court. No litigant can persuade a court of anything once that court has decided that it will not be persuaded by the litigant. What does a litigant say to a court which declares that it will not hear the litigant? The defendant became incompetent to represent himself when Judge Thorburn announced that he was incompetent to represent himself. It was the announcement itself which rendered the defendant incompetent to represent himself.

In any event, whether or not the "defendant is incompetent to properly represent himself in this particular cause", he has a constitutional *right* to represent himself.

> A suitor in any court of this State has the right to prosecute or defend his suit, either in his own proper person or by an attorney (Michigan Constitution of 1963, Art I, Sec. 13)

Michigan Statutes clarify the constitution.

> Every person of full age and sound mind, may prosecute or defend civil actions in any court by an attorney, or may, at his election, prosecute or defend civil actions in person. No person shall be permitted to prosecute or defend any civil action in person, when he has an attorney in such case. (Revised Judicature Act of 1961 Sec. 1430)

No judge in Michigan is authorized to appoint a guardian ad litem for a litigant of full age and sound mind over the litigant's objection, nor is the defendant aware of any case where such an appointment has been made. Self-representation is not merely a privilege, it is an absolute *right*. It cannot be denied upon the assertion that such a denial is "to protect the interests of the defendant". Heaven help us when a court can deny a defendant's constitutional rights any time it wants to merely by intoning the magic phrase, "to protect the interests of the defendant". Dictators and tyrants have always justified the usurpation of power by claiming to protect the interests of the very people whose individual rights they trample upon.

Within a few months after Judge Thorburn had appointed a guardian ad litem over the defendant "to protect the interests of the defendant" (from Judge Thorburn himself, ironically) he destroyed the one thing that the defendant was interested in protecting—his marriage. Was the guardian ad litem any less incompetent to protect the interests of the defendant than the defendant himself? What else would the defendant have lost if he had ~~not~~ had a guardian ad litem to protect his interests? His liberty? His life? What worse punishment would Judge Thorburn have inflicted upon the defendant were he allowed to exercise his constitutional right to defend his suit in person? To complete the irony Judge Thorburn has voiced *his* feeling that a divorce was in the best interests of the defendant.

The defendant sought the advice of attorneys after the appointment of a guardian ad litem. These attorneys were at a loss to explain the order of appointment; they had never seen such an order before. They agreed, however, that the defendant could not just ignore the order even if it be invalid. The defendant was advised that the con-

trol of his litigation had been taken from him—that he could recover control only by petitioning the Court of Appeals to vacate the order of appointment. Accordingly, the defendant attempted to appeal the order to the Court of Appeals and ceased defending himself in the Trial Court.

The order of appointment of a guardian ad litem was such an infringement upon the defendant's right to defend himself—such a deprivation of the defendant's capacity to protect his marriage—such a gross departure from the "settled procedure" demanded by due process as to render the Judgment of Divorce invalid.

Relief Sought

It is requested of this Court that the Judgment of Divorce be declared void.

Respectfully submitted,

Jack Rose
23999 W. Ten Mile Road
Southfield, Michigan 48075

Dated: December 20, 1969

APPENDIX N

EXCERPTS FROM TRANSCRIPT OF TRIAL COURT PROCEEDINGS OF THE END OF SEPTEMBER, 1969

* * * * *

The Court: Mr. Andrews, are you ready?

Steven N. Andrews: I am ready, your Honor. As I understand the orders of this Court, I am to aid and assist my ward in the defense of this litigation?

The Court: That is correct. It may be unusual, but you stand in the legal place of the ward. It may be that this presents unlawful problems, but we will wait and see what occurs.

* * * * *

Mr. Andrews: Now, I must address myself to the question of attorney fees as guardian of my ward. I must join with Mr. Barris in many instances in indicating that it is the difficulty of the case, the situation the attorney-guardian is placed in, in the case at bar.

I first came into this case on August 25, 1969, or thereabouts. I have continued through this morning. I have spent time in preparation. I must say without question that I do not wish the Court to take into consideration any conversations which I may have had by telephone with Mr. Rose. And I wish the Court to remember that he at all times has indicated he would not cooperate with me. He does not wish me as his guardian.

However, my time in this case and my court appearances have been numerous. The record would speak for itself. We have had this trial, the preparation for the trial, the research of case law involved, some of the facts that I have obtained through other sources. And I ask the Court to take into consideration the competency of other counsel.

I ask this Court for an attorney fee of $20,101.20. * * *

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APPENDIX O

EXCERPT FROM TRANSCRIPT OF TRIAL COURT PROCEEDINGS OF APRIL 23, 1969

* * * * *

The Court: . . . This Court presently is of the opinion that you are not competent to represent yourself in litigation of this magnitude. This is the position of the Court and the opinion of the Court.

Do you have anything further to say?

Mr. Rose: Well, Judge Thorburn, I admit that I am not a competent attorney. I wonder if you can find any layman who can pretend to be a competent attorney?

The Court: I don't think so, in a piece of litigation of this magnitude. I think you are correct in that assertion. That is why I repeatedly urged you to do what you did in two prior pieces of litigation. You hired extremely competent counsel, and I might add that you prevailed in each piece of litigation. I am at a loss as to why you won't do so here.

The only conclusion I can reach is that you need protection from yourself. This is why I intend to appoint a guardian ad litem for you.

Mr. Rose: Judge Thorburn, the Constitution of Michigan, the 1963 Constitution, Article I, Section 13 provides —I will read it:

> "A suitor in any court of this state has the right to prosecute or defend his suit either in his own proper person or by an attorney."

Now, the framers of the Constitution must have known that a layman cannot be competent to act as an attorney, but nevertheless they have given every layman that right, the right to—

The Court: That is correct. Your citation is accurate. But there is a corrollary. The case law shows, despite such a Constitution, that when a man is not competent to represent himself in proper person, the Court can in its discretion appoint a guardian ad litem for him to assist him.

* * * * *

APPENDIX P

STATE OF MICHIGAN—In the Circuit Court for the County of Oakland

Doris Wertheimer Rose, Plaintiff, v. Jack Rose, Defendant.	Nos. 9276, 22744, 68-47753

PLAINTIFF'S MOTION TO VACATE ORDER OF APRIL 23, 1969 APPOINTING A GUARDIAN AD LITEM

Now comes the plaintiff, Doris Wertheimer Rose, by her attorney, Ivan E. Barris, and hereby moves this Honorable Court for its order vacating its order of April 23, 1969 appointing a guardian ad litem for the defendant. In support of this Motion, the following is shown unto this Honorable Court:

1. That this Honorable Court, on its own motion, and in pursuance of a petition therefor earlier filed by the plaintiff, has heretofore, to-wit: on April 23, 1969, entered its order appointing guardian ad litem for the defendant.

2. That defendant is presently processing an Application for Leave to Appeal to the Michigan Court of Appeals with respect to said order appointing guardian ad litem for defendant.

3. That while plaintiff feels that said order of appointment of guardian ad litem was perfectly proper and a fair and judicious exercise of this Court's power, a power exercised in the interests of justice and the orderly administration of justice, plaintiff hereby requests that said order

be vacated and set aside for the reason that its entry has occasioned another flurry of appellate activity on the part of the defendant which in the ordinary course of events could lead to further delay in a final adjudication on the merits of the instant litigation[1].

4. That the existence of the said order, while obviously not intended as such by this Honorable Court, provides another vehicle for delay so obviously desired by the defendant.

5. That the plaintiff is entitled to her "day in court"; that she has been without support for over three years and has been able to sustain herself only by virtue of the fact that her parents have been loaning her substantial sums of money in the interim upon which to live.

6. That counsel for the plaintiff fervently believes, and thus avers the fact to be, that only a final adjudication on the merits of the instant litigation can serve the ends of justice and that accordingly, if the defendant wishes to exercise his constitutional right to appear as his own counsel this Honorable Court should allow him to do so rather than further delay these prceedings.

Wherefore, plaintiff prays this Court to enter its order vacating its order of April 23, 1969 appointing a guardian ad litem for defendant.

Ivan E. Barris
Attorney for Plaintiff
2066 Penobscott Bldg.
Detroit, Michigan 48226
WO 2-8210

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[1] The designated guardian ad litem, Judge Searle, has indicated that he will not accept the appointment of guardian ad litem until the appellate court acts upon the defendant's Application for Leave to Appeal.

APPENDIX Q

LETTER FROM RESPONDENT'S ATTORNEY TO RESPONDENT

PIGGINS, BALMER, GRIGSBY, SKILLMAN & ERICKSON

Attorneys and Counselors
David Stott Building
Detroit, Michigan 48226

June 10, 1965

Re: Rose vs. Rose

Mrs. Doris Rose
19775 Magnolia
Southfield, Michigan

Dear Doris:

The pretrial hearing this morning was adjourned to August. The Judge had to attend a meeting of all Oakland County Judges and he will be away for the month of July. In the meanwhile he very pointedly asked me if you would not consider changing your Complaint from separate maintenance to divorce. I promised him I would explore this matter thoroughly with you.

Should you agree to do so Mr. Buesser will, of course, promptly furnish me any and all information I may desire regarding assets and we can reschedule the depositions of Mr. Rose. Should we proceed with his deposition we would probably have to hire appraisers to determine true mar-

ket values of closed corporations. All this will entail not only a great deal of time but a sizeable expense for you. It would seem wiser that we first amend our Complaint to a divorce and then submit to them a proposal of settlement in order to see if we can reach an agreement without hiring appraisers, etc., in preparation for trial.

Please advise.

Very truly yours,

PIGGINS, BALMER, GRIGSBY,
SKILLMAN & ERICKSON
By Rowe A. Balmer